

1975

K and P Plumbing and Heating v. Eldon W. Winterton and Jean G. Winterton : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *K and P v. Winterton*, No. 13942.00 (Utah Supreme Court, 1975).
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UTAH SUPREME COURT

BRIEF

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OF THE
STATE OF UTAH
BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

K & P PLUMBING AND HEATING INC.,
a Utah Corporation,
Plaintiff & Respondent,
vs.

ELDON W. WINTERTON, and
JEAN G. WINTERTON, his
wife,
Defendants & Appellants

A P P E A L

Case No.
13,942

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE
FOURTH JUDICIAL DISTRICT COURT,
IN AND FOR UTAH COUNTY, STATE
OF UTAH, THE HONORABLE
J. ROBERT BULLOCK, JUDGE, PRESIDING.

FILED

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Authorities Cited

UTAH CODE ANNOTATED (1953) as amended	
Section 14-2-1.....	1, 2 and 3
UTAH CODE ANNOTATED (1953) as amended	
Section 38-1-24.....	1, 2 and 3

IN THE
SUPREME COURT
OF THE
STATE OF UTAH

K & P PLUMBING AND HEATING INC.,
a Utah Corporation,
Plaintiff & Respondent,
vs.

ELDON W. WINTERTON, and
JEAN G. WINTERTON, his
wife,
Defendants & Appellants

} A P P E A L

} Case No.
13,942

BRIEF OF RESPONDENT

STATEMENT OF THE KIND OF CASE

This was an action filed by plaintiff pursuant to Section 14-2-1 Utah Code Annotated (1953) as amended for services rendered by plaintiff at the request of the general contractor on property owned by the defendants. Defendants filed a Counterclaim seeking relief from the plaintiff pursuant to 38-1-24 Utah Code Annotated (1953) as amended.

DISPOSITION IN LOWER COURT

The case was tried to the Court without a jury. Plaintiff was granted judgment against the defendants for the sum of \$1,000.00 plus costs. Defendant's Counterclaim was dismissed, the Court finding that defendants had not been damaged.

RELIEF SOUGHT ON APPEAL

Affirming the trial Court's decision.

STATEMENT OF FACT

In 1973, the defendants retained the services of a general contractor to build a home for them in the City of Roosevelt, Duchesne County, State of Utah. The defendants failed to required performance of the contractor by way of a bond. Plaintiff was one of the subcontractors who performed labor and supplied materials for the construction of the home of the defendants. Plaintiff was not paid the amount due it by reason of the labor and materials performed and supplied.

On or about January 2, 1974, the plaintiff filed a Notice of lien against the property of the defendants. On or about February 8, 1974, the defendants made demands upon the plaintiff to remove the lien placed upon their property. Plaintiff complied with the defendant's request and on or about March 6, 1974, a Notice of Lien Release was prepared and was filed with the Duchesne County Recorder on March 21, 1974.

(Defendant's Exhibit 1)

Plaintiff subsequently commenced legal action against the defendants for monies due and owing based on the bonding statute contained in 14-2-1 Utah Code Annotated (1953) as amended. Defendants defended against the action and also filed a Counterclaim asking for damages based upon 38-1-24, Utah Code Annotated (1953) as amended. The Court in its judgment favored the plaintiff on its Complaint and against the defendant on its Counterclaim.

ARGUMENT

The language of the statute in question is explicitly clear as to its application. The statute deals only with cases where damages are allowable when payment has been made on a lien filed and the claimant of said lien refuses, upon demand, to release the lien. In the instant case, a lien was filed, demand was made for its release, and a release was filed and recorded. To become operative, 38-1-24 Utah Code Annotated (1953) as amended must deal with cases where payment of a claim has been made and the lien claimant fails to release the lien.

CONCLUSION

Respondent respectfully submits that the judgment of the Court should be affirmed by this Court.

Respectfully submitted,

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